Supreme Court, U.S.
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No. 94-1387

In The

Supreme Court of the United States

October Term, 1995

YAMAHA MOTOR CORPORATION, U.S.A. and
YAMAHA MOTOR COMPANY, LTD.,

Petitioners,

v.

LUCIEN B. CALHOUN and ROBIN L. CALHOUN,
Individually and as Administrators of the
Estate of Natalie K. Calhoun, Deceased,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITIONERS' REPLY BRIEF

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ARGUMENT

No one contests the proposition that this case falls within admiralty jurisdiction. The fundamental question presented to this Court, then, is: what does this mean? Respondents would have this Court hold that it means next to nothing. Respondents see the maritime nature of this case as nothing more than a procedural device that enables a federal court to assume jurisdiction. It is more than that, however. With admiralty jurisdiction comes the application of substantive admiralty law. That law, as it applies to deaths in territorial waters, is this Court's decision in *Moragne v. State Marine Lines, Inc.*, 398 U.S. 375 (1970) – to the exclusion of state law.

I. BY SEEKING TO LIMIT *MORAGNE* TO ITS FACTS, RESPONDENTS IGNORE BOTH THE RULE OF THAT CASE AND THE PRINCIPLE IT WAS INTENDED TO ADVANCE

The Calhouns suggest *Moragne* does not apply to their case since Natalie Calhoun was not a longshoreman and her claim is not one for unseaworthiness. Because they characterize her death as resulting from a breach of state tort products liability law, the Calhouns argue it would be unfair to compensate them under a scheme geared toward the maritime worker. In doing so, they confuse liability with remedy and remedy with damages.

Rule 29.1 Statement: The Court is directed to Petitioners' principal brief, at p. iii.

Respondents have claimed against Petitioners on the theories of negligence and products liability. Those theories of liability are recognized in admiralty just as they are under general, land-based law. While the Respondents are correct in noting that Yamaha manufactures and markets many products that are operated on land, in this case Yamaha is being sued as a boatbuilder because of an alleged deficiency in the vessel Natalie Calhoun was operating on navigable waters. This Court has specifically recognized that a products liability claim asserting a vessel deficiency alleges a breach of a maritime duty, *East River S.S. Corp. v. Transamerica Delaval*, 476 U.S. 858 (1986).

In *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982) and *Sisson v. Ruby*, 497 U.S. 358 (1990), this Court held that casualties involving recreational vessels on navigable waters are within admiralty from both a jurisdictional and choice-of-law standpoint. The Calhouns' claim is maritime in nature, and their recovery must be determined under admiralty law.

Why should the rule announced in a case involving a longshoreman apply to the death of a 12-year-old girl riding a personal watercraft? Simply put, it would require both a myopic reading of *Moragne* and a fundamental misunderstanding of the role of this Court to conclude otherwise. As the ultimate architect of the law of the land, the Supreme Court does more than decide individual cases. By resolving individual controversies, the Court announces rules that are to be generalized by the lower courts to advance the principles espoused by this Court.

In *Moragne* this Court created a general maritime law death remedy for deaths caused on territorial waters. The guiding principle behind *Moragne* was uniformity of maritime remedy. Recognizing both the Constitutional mandate of "a system of law co-extensive with, and operating uniformly in, the whole country", *The Lottawanna*, 88 U.S. (21 Wall.) 558 (1875), and the chaos that had resulted in the absence of such uniformity, the Court announced "a right to recover for wrongful death under general maritime law" in order to "assure uniform vindication of federal policies" and "remov[e] the tensions and discrepancies" that had resulted from the application of state law during *The Harrisburg* era. *Moragne*, 398 U.S. at 401-02.

The Court's wording of the rule announced in *Moragne* is patently indicative of a broader intent. The court did not speak only in terms of a remedy for wrongful death of a longshoreman killed due to unseaworthiness. Rather, *Moragne* announced "an action does lie under the general maritime law for deaths caused by violation of maritime duties." *Moragne*, 398 U.S. at 408.

Given that *Moragne* was expressly intended to advance the principle of uniformity, it would be counterproductive to restrict its rule as Respondents suggest. If *Moragne* is limited to maritime workers, the disharmony resulting from the continued application of state tort law to civilian claimants would render any inroads toward uniformity illusory, and *Moragne* would have accomplished nothing. *Moragne* makes no sense unless it is construed to apply to all maritime claimants in territorial waters and can foster uniformity only if it is applied broadly and uniformly.

The circumstances surrounding *Moragne* further confirm the broad intent of its authors. Nearly a century earlier, this Court had ruled in *The Harrisburg*, 119 U.S. 199 (1886) (a case involving the death of a seaman allegedly due to negligence), that there was no right of action for wrongful death under the general maritime law. If the *Moragne* Court had intended to create a remedy solely for the deaths of longshoremen resulting from unseaworthiness, it could easily have done so without overruling *The Harrisburg*, which had already been effectively negated on its own facts with the enactment of the Jones Act in 1920. In overruling *The Harrisburg*, the Court removed the bar to recovery for the deaths of all "human beings", not just seamen or maritime workers. *See The Harrisburg*, 119 U.S. at 204; *Moragne*, 398 U.S. at 409.

II. RESPONDENTS WOULD HAVE THIS COURT APPLY LAND-BASED PREEMPTION METHODOLOGY RATHER THAN THE ADMIRALTY DISPLACEMENT SCHEME OUTLINED IN *AMERICAN DREDGING*

The Calhouns' arguments regarding the interplay between state and federal law are most remarkable for what they do not say. Rather than addressing the maritime choice-of-law analysis in *American Dredging Co. v. Miller*, 510 U.S. ___, 114 S.Ct. 981 (1994), they attack the decision in which the doctrine originated, *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), without acknowledging (1) that the criticism directed toward *Jensen* has centered more on its abstract criteria than its actual result; or (2) that the alternative standards set forth in the concurring opinions in *American Dredging* are equally favorable to Yamaha.

In *American Dredging*, the question was whether a state statute rendering the doctrine of *forum non conveniens* unavailable in Jones Act cases brought in state courts was preempted by federal maritime law, which recognizes and enforces that doctrine. The Court in *American Dredging* characterized the issue before it as "whether the doctrine of *forum non conveniens* is either a 'characteristic feature' of admiralty or a doctrine whose uniform application is necessary to maintain the 'proper harmony' of maritime law," 114 S.Ct. at 985, and held that it was neither. After acknowledging that the interplay between state and federal law had not been set forth clearly in its previous decisions, the majority stated:

> Wherever the boundaries of permissible state regulation may lie, they do not invalidate state rejection of *forum non conveniens*, which is in two respects quite dissimilar from any other matter that our opinions have held to be governed by federal admiralty law: it is procedural rather than substantive, and it is most unlikely to produce uniform results.

Id. at 988.

The Calhouns' reluctance to address *American Dredging* is both understandable and predictable, because the *American Dredging* approach compels the application of the maritime death remedy to the exclusion of state law. *Moragne* and its progeny create an established general maritime rule of law that is indisputably substantive. While state and federal regulation of maritime activity may be coextensive, under *American Dredging* the substantive remedies of their respective tort systems must be mutually exclusive.

As in *Moragne*, the guiding principle behind the Court's decision in *American Dredging* is uniformity of maritime remedy. The application of a state *forum non conveniens* rule is not offensive to this goal, because it does not affect the outcome of the case. On the other hand, the application of substantive state wrongful death statutes would undermine uniformity by producing differing and conflicting results.

The Calhouns and their *amici* suggest the application of *Moragne* to civilians such as their daughter would be a new and unwarranted intrusion of federal law into the sovereignty of the states. Nevertheless, the absence of supporting authority decided since *Moragne* is telling. During these same 25 years, this Court has expressly recognized the applicability of *Moragne* to seamen in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and referred to the *Moragne* wrongful death remedy as a "national rule" in *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 624, n.18 (1978), a case involving civilian deaths. At the same time, virtually every court other than the court below has applied the *Moragne* wrongful death remedy to the exclusion of state remedies in cases involving claimants of all statuses, including civilians like Natalie Calhoun and her parents. *See, e.g., Wahlstrom v. Kawasaki Heavy Industries, Ltd.*, 4 F.3d 1084 (CA2 1993), *cert. denied*, 510 U.S. ___, 114 S.Ct. 1060 (1994); *Kelly v. Panama Canal Comm'n*, 26 F.3d 597 (CA5 1994); *Walker v. Braus*, 995 F.2d 77 (CA5 1993); *Anderson v. Whittaker Corp.*, 692 F.Supp. 764 (W.D. Mich. 1988), *aff'd in part, rev'd in part on other grounds*, 894 F.2d 804 (CA6 1990); *Spiller v. Thomas M. Lowe, Jr. & Assocs., Inc.*, 466 F.2d 903 (CA8 1972); *Sutton v. Earles*, 26 F.3d 903

(CA9 1994). *See also,* federal district and state court decisions cited at pp. 27 and 28 of Petitioners' principal brief.

Petitioners are not asking this Court to sail forward into new and uncharted waters. Rather, the Calhouns and their *amici* are asking the Court to disregard the evolution in the substantive maritime law that has taken place over the last quarter century and return to the chaotic days of *The Harrisburg*. It would be truly ironic, to say the least, if this restrictive interpretation of the very decision that overruled *The Harrisburg* could lead to its resurrection.

CONCLUSION

For the reasons set forth herein and in Section I of Yamaha's main brief, Petitioners respectfully urge this Court to reverse the decision of the Court of Appeals.

Respectfully submitted,

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